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Direct delisting under new takeover norms a boon

By [Rajesh Mascarenhas](#) & [Reena Zachariah](#), ET Bureau | Updated: Sep 29, 2016, 10.15 PM IST

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MUMBAI: Promoters are using a nearly forgotten takeover rule to acquire control over [Indian companies](#) these days.

Last year, the market regulator had relaxed takeover rules for companies, allowing promoters to launch both open offer and delisting offer at the same time, a provision [Xchanging Solutions](#) applied recently.

"Earlier, companies after acquiring controlling stake, had to first launch an open offer, and then separately launch a delisting offer," said [Sourav Mallik](#), joint MD, Kotak Investment Banking. "Xchanging Solutions is the first company to benefit from the revised takeover code and delisting regulations." Kotak is handling the offer.

Investment bankers said the process of enabling a delisting offer along with the mandatory open offer is a positive step towards improving the ease of doing business and supporting the M&A environment in India.

"The changes provide an added tool for acquirers without compromising the interest of the minority public shareholders. While the reverse book building process has been retained, the concept of delisting along with takeover is an internationally accepted practice and takes the Indian regulatory framework one step closer to global norms," said Mehul Savla, director of RippleWave Equity Advisors.

"The necessity of maintaining 25% public holding for listed companies often compelled acquirers to restrict acquisition of the full stake of selling promoters if there was a likelihood of the public holding breaching this limit after the mandatory open offer. This led to sub optimal transaction structures. Also, with the delisting offer being conducted through the stock exchange mechanism, the shareholders would stand to gain from tax efficiency compared to off market trades earlier," Savla said.

US-based Computer Science Corporation (CSC) globally acquired Xchanging Plc, a London-based company. This indirect acquisition triggered an open offer obligation on [CSC](#) for Xchanging Solutions, the Indian arm of Xchanging Plc. The British parent made a simultaneous open offer and delisting offer for the public shareholders of the [IT](#) outsourcing company.

After the company announced its delisting plans, the share prices of Xchanging Solutions more than doubled from Rs 50 in early May to a high of Rs 106.65 on August 31, as against the offer price of Rs 40.51. The discovered price was Rs 109, which was not acceptable to the company, so it decided not to go ahead with its delisting plans but continue with its open offer.

Sandeep Parekh, founder, Finsec Law, said the revised rules have significantly reduced the timeline and eliminated the duplication process for the acquirer.

The Achuthan committee report on takeover regulations had deliberated at length and recommended direct delisting under the takeover regulations.

"This makes the delisting process quicker rather than having to wait for 12 months. The Achuthan committee had even considered the feasibility of adopting the concept of "squeeze-out" of minority public shareholders i.e., conferring the acquirer with a statutory right to acquire minority shareholders on same terms when the acquirer's shareholding crosses 90%.

"Squeeze-out" is currently not possible and cannot be legally effected through Sebi regulations in the absence of a statutory provision," said Yogesh Chande, Partner, Shardul Amarchand Mangaldas & Co.

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